

## **REPORT TO THE GOVERNOR AND THE LEGISLATURE**

### **ON 1997 ACTIVITIES OF THE DELTA PROTECTION COMMISSION**

Section 29780 of the Delta Protection Act of 1992 (Act) requires the Commission to submit an annual report to the Governor and the Legislature describing the progress in achieving the objectives of the Act. The annual report is to include an evaluation of the effectiveness of the regional plan in preserving agricultural lands, restoring delta habitat, improving levee protection and water quality, providing increased public access and recreational opportunities, and in undertaking other functions prescribed in the Act; an update of the regional plan, using baseline conditions set forth in the original regional plan; and the status of the environmental thresholds established by the Commission in the original regional plan.

#### **Status of the Delta Protection Commission:**

In 1996, the Legislature approved and the Governor signed into law SB 1673, which authorized a two year extension of the Commission's original sunset date of January 1, 1997. Unless further action is taken by the Legislature, the Commission will sunset January 1, 1999.

The amendment also allowed the Commission to meet every other month. In response, the Commission set its regularly scheduled meetings for the odd months of the year, but is prepared to meet as needed to respond to an appeal in a timely manner.

There were several new Commissioners in 1997, a complete roster is attached. There are three new city representatives from Association of Bay Area Governments (Fred Harris, Mayor of Rio Vista), Sacramento Area Council of Governments (Councilmember Christopher Cabaldon, West Sacramento), and from the San Joaquin Council of Governments (Councilmember Gloryanna Rhodes, City of Lathrop). Contra Costa County Supervisor Joe Canciamilla replaced Tom Torlakson. Newly-elected Assemblymember Torlakson became the ex-officio member of the Commission representing the Assembly. A new representative for State Lands Commission, Dwight Sanders, was appointed after Steve Sekelsky retired.

All five reclamation district representatives were re-elected: Robert Calone, Contra Costa County; Darrell Ferreira and Steve Mello, North Delta Water Agency; Patrick McCarty, Central Delta Water Agency, and Bill Salmon, South Delta Water Agency.

The Commissioners receive no compensation for their work on the Commission.

#### **Status of the Land Use and Resource Management Plan:**

##### **1. Adoption of the Plan and Local Government General Plan Amendments:**

The Commission adopted the "Land Use and Resource Management Plan for the Primary Zone of the Delta" (Plan) on February 23, 1995.

As required by the Act, local governments submitted proposed amendments to bring the local government General Plans into conformance with the Plan. In 1995, the Commission reviewed and approved local government proposals including: City of Pittsburg; Solano County; Yolo County; Contra Costa County; and San Joaquin County. During 1996, the Commission reviewed and approved local government proposals from City of Rio Vista and Sacramento County. During 1996, most of the local governments completed the General Plan amendment process including

San Joaquin County; Contra Costa County; City of Rio Vista; Sacramento County; and Solano County. No general Plan amendment was needed for the City of Pittsburg.

In 1997, the Commission approved the City of Stockton's General Plan amendment in January. Yolo County approved its General Plan amendment in March.

## **2. Amendment of the Plan and Local Government General Plan Amendments:**

In 1996, the Commission started the process to amend the Plan to adopt as a regulation the language in Utilities and Infrastructure Policy

P-3. That language prohibits the construction of new sewage treatment plants and the disposal of sewage effluent and sewage sludge in the Primary Zone of the Delta. The rulemaking file was filed with the Office of Administrative Law on December 12, 1996.

On January 28, 1997, the Commission received final approval of the regulation from the Office of Administrative Law. In response to the amendment, local governments are required to inform the Commission if general plans need to be amended to conform to the amended Plan. Several local governments indicated that their earlier General Plan amendments would assure conformance with future amendments to the Plan, and that no further General Plan amendment would be needed. The Commission concurred with the findings submitted by: City of Stockton (May); Contra Costa County (September); and Yolo County (September).

**Effectiveness of the Plan:** (See attached "Summary of Projects Approved in the Primary Zone, 1997" for more information.)

## **1. Preserving Agricultural Land in the Primary Zone:**

Actions to preserve agricultural land continue on three fronts: non-profit groups, local governments, and the State. Non-profit groups exist in all five Delta counties with the goal of protecting agricultural lands. The most recent is a land trust in Contra Costa County. Few conservation easements have been acquired in the Delta Primary Zone by local non-profits.

Local governments continue to protect agricultural land through the existing General Plans and zoning. Contra Costa County adopted a "Right to Farm" ordinance in 1997.

The State of California has increased funding available to local governments and non-profits for acquisition of agricultural conservation easements. The Department of Conservation manages the State's new Agricultural Land Stewardship program. In FY 96-97, one million dollars in grant funds were distributed; to date none of the grants were distributed to Delta local governments or non-profits.

In September, the Commission discussed and decided to send an advisory comment letter regarding a proposal by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service that would require installation of a fish screen on any pump or siphon intake that required a maintenance permit from the Corps of Engineers. The Commission's letter raised concern about the very high cost of installing fish screens, and suggested that the existing State policy regarding fish screens be followed until new studies can be completed to indicate where installation of fish screens would be most effective. The Commission was concerned that implementation of the proposed program would have a deleterious economic impact on agriculture in the Delta Primary Zone.

## **2. Conversion of Agricultural Land in the Primary Zone to Habitat:**

At this time, the largest potential impacts to agricultural lands in the Primary Zone are proposals to restore/recreate habitat on agricultural lands. The Commission reviewed new proposals presented by CALFED in the Draft Ecosystem Restoration Program Plan to convert over 100,000 acres of agricultural land in the Legal Delta to habitat. Most of the acres proposed for conversion from agriculture to habitat are in the Primary Zone.

Projects still pending include: proposals by Department of Water resources to convert much of Sherman and Twitchell Islands from agriculture to managed wetland wildlife habitat, and a multi-agency proposal to permanently convert Prospect Island to aquatic habitat. The Delta Wetlands project, which would convert most of Bouldin and Holland Islands to managed wetland habitat and convert Webb and Bacon

Islands to reservoirs, is pending before the State Water Resources Control Board. In 1997, Department of Water Resources completed purchase of two parcels on Sherman Island: 2,819 acre parcel formerly owned by Upham; and 239 acre parcel formerly owned by Dierssen.

The Yolo Bypass Wetlands Enhancement Project (Yolo Basin Foundation, Department of Fish and Game and U.S. Fish and Wildlife Service), was completed in Fall of 1997, and dedicated in a large ceremony featuring President Clinton. The project encompasses 3,600 acres of agricultural land already subject to flood easements.

The U.S. Fish and Wildlife Services'(Service) Stone Lakes Wildlife Refuge is proposed to ultimately have 9,000 acres of land to the north of Lambert Road in public ownership, and 9,000 acres south of Lambert Road in private ownership managed under agreements with the Service. In the north, approximately 6,000 acres are in public ownership by State and local governments, and 970 acres are owned by the Service. This includes a 227 acre vineyard, just north of Lambert Road, purchased by the Service in 1997. The vines will be removed and the site restored to habitat.

The 1,566 acre Jepsen Prairie Preserve in western Solano County was transferred from the Nature Conservancy to the Solano County Farmlands and Open Space Foundation in September 1997. In addition, the Open Space Foundation received a three year, \$244,000 Category III grant from CALFED for riparian restoration, noxious weed control, and planning efforts.

## **3. Conversion of Agricultural Lands in the Primary Zone to Other Uses:**

There have been few proposals which would convert agricultural lands to "other" uses.

The City of Rio Vista, which acquired land in the Primary Zone in Solano County for construction of a new wastewater treatment plant east of the City, is evaluating an alternative to enlarging the existing plant. Ironhouse Sanitary District, which proposes to dispose of treated wastewater and sludge on Jersey Island, Contra Costa County, in the Primary Zone has just submitted a proposal to farm 240 acres on Jersey Island using treated wastewater as irrigation water. [Note: These projects are exempt from Utilities and Infrastructure Policy P-3 in the regional plan.]

Proposals to convert agricultural lands to residential development are still under consideration in Yolo County adjacent to the Community of Clarksburg and in Sacramento County adjacent to the Community of Courtland; there was no action on either of these projects during 1997.

## **4. Restoring Delta Habitat:**

State and federal agencies and nonprofit groups have continued to acquire land and pursue programs to restore those lands to Delta habitat (Yolo Bypass Wetlands project; acquisition and restoration in

the Stone Lakes Wildlife Refuge and Cosumnes River Preserve, Prospect Island, and Reconnaissance Plan for Little Holland Tract and Liberty Island).

The Commission staff has been actively participating in the San Francisco Estuary Project's Delta work group which has been developing a consensus-based program for protecting and enhancing in-channel islands, and the remnants of natural habitat upon those islands. The San Francisco Estuary Project, with their fiscal agent the Association of Bay Area Governments, recently received a Category III grant from the CALFED program to start the first phase of the demonstration project.

Additional projects which would create habitat in water-covered areas include a proposal by Department of Water Resources to raise the elevation of a low-lying island near Sherman Island to allow growth of riparian habitat, and a recent proposal, also supported by Department of Water Resources, to enlarge and raise in elevation accretion areas within Franks Tract, a flooded area owned by the Department of Parks and Recreation. Both of these projects have received funding from the Category III program.

The private Medford Island (San Joaquin County) mitigation bank is in place. A new private proposal for a mitigation bank on Kimball Island (Sacramento County) is under review.

## **5. Protecting Recreational Opportunities:**

When the East Bay Regional Park District (EBRPD) acquired the western half of Big Break in Contra Costa County, it inherited a group of duck blinds that were permitted by the previous owner to use and store blinds on the site. The Commission staff has been working with the blind owners and the staff of EBRPD to ensure that continuation of duck hunting will be allowed to continue on the site. After several meetings and discussions, agreements between the blind owners and the EBRPD are drafted and should be executed soon.

The Commission staff completed and released an "Inventory of Recreational Facilities" in the Delta area. The report, which includes text, charts, and maps, list public and private recreational facilities in the Primary Zone and in other areas which access the waters of the Primary Zone. A wide variety of facilities are listed from trails and wildlife observation areas to marinas, launch ramps, and fishing piers. The purpose of the report is to provide general planning information for local and State decisionmakers, and others interested generally in recreation in the Delta area. Copies of the report are available from the Commission's offices. The information in the report has also been added to the Commission's home page on the Internet ([www.delta.ca.gov](http://www.delta.ca.gov)).

The Department of Parks and Recreation completed and submitted a report prepared under contract with the Commission and the Department of Boating and Waterways. The "Sacramento-San Joaquin Delta Recreation Survey" provides information on boaters and anglers statewide that recreate in the Delta area. The survey asked their place of residence, where they recreate, the activities in which they participate, and the amount of money they spend while recreating in the Delta. Again, the information is to provide general planning information for local and State decisionmakers, and other interested generally in recreation in the Delta area. Copies of the report are available from the Commission's offices. A summary of the information in the report has also been added to the Commission's home page on the Internet ([www.delta.ca.gov](http://www.delta.ca.gov)).

Under Prop 204, two million dollars is available for new public access and recreation projects in the Legal Delta. The Department of Parks and Recreation will use one million dollars for State park projects. One million dollars is available in grants to local governments and non-profits for acquisition of lands to provide new areas for public access and recreation in the Legal Delta. The grant program is managed by the Department of Parks and Recreation. The Department sponsored a workshop to help applicants understand the grant process and share information about additional grant programs which could be "bundled" with the Prop 204 money for development of new projects.

## **6. Improving Levee Protection and Water Quality:**

### **a. Emergency Planning:**

In January 1997, the Delta and much of the State suffered damage from flooding. Several weeks of floodfight resulted from high levels of rain, snowmelt, and the resulting runoff, all accentuated by extreme high tides. In the Delta, there were concerns associated with the need to close the Delta waterways to commercial and recreational vessels in times of extreme high water; the need to ensure that marinas are constructed and managed to ensure that vessels and other structures will not be swept away during times of high water flow, possibly endangering public health and safety.

The Commission and staff participated in the Governors Flood Emergency Action Team (FEAT) which reviewed issues and events statewide and developed a series of recommendations for enhanced emergency preparedness and response in future events. The Commission reviewed and approved a letter outlining issues of concern to the Delta in response to the FEAT 30 Day Report (March). In July, the Commission reviewed the final report to the Governor which included the following recommendations: development of a plan for emergency closures of the Delta waterways during periods of extremely high water; improved processes to facilitate levee and river channel maintenance; and development of guidelines to anchor marinas.

### **b. Levee Protection:**

The Commission has continued to participate in the Secretary for Resources' Delta Levees and Habitat Advisory Committee's meetings to coordinate and streamline permitting associated with Delta levee maintenance. To date, the communication and working relationships among the participants has improved. The Committee helps provide oversight to the levee subventions program (SB 34, SB 1065, and AB 360). The program has funded over \$108 million in levee maintenance and upgrades since 1986.

In July, the Commission received a briefing from Lynn O'Leary, Corps of Engineers, regarding the second phase of a Corps-Department of Water Resources-Reclamation Board study of Delta levees. The study will address issues of flood control, environmental restoration, and navigation. The study will also include a 2,000 foot long test levee on Sherman Island. The Corps will refine a prioritization list for restoration projects in the Delta and will include a risk-based analysis of flood control projects/levees on five islands.

### **c. Water Quality:**

The Central Valley Regional Water Quality Control Board staff has not yet presented draft General Orders regarding dredging in the Delta waterways to the Board. There is staff concern that additional environmental review work is required before Board consideration. A decision by the new Executive Officer is pending.

Department of Water Resources' South Delta Temporary Barriers program, designed to protect South Delta water quality, was extended until 2001. The project installs seasonal barriers on four South Delta waterways to protect water quality in the South Delta in the summer months.

### **Legal Issues:**

In 1995, the Commission was sued by Bio Gro, a division of Wheelabrator Industries, over Utilities and Infrastructure Policy P-3, which precludes placement of sewage effluent and sewage sludge in the Primary Zone of the Delta. One suit was filed in State Court and one filed in Federal Court.

The State suit was heard on October 13, 1995. Judge Thomas Cecil found that plaintiff Bio Gro had standing to sue on the "underground regulation" question and that Policy P-3 constitutes a "regulation" under the Administrative Procedures Act (APA). As a result, the Commission "set aside" Policy P-3.

In 1996, the Commission directed staff to proceed with preparation of a Plan amendment and new regulation to address the issues in Utilities and Infrastructure Policy P-3. The Commission approved the amendment and regulation at its September 1996 meeting. The final approval of the new regulation/Plan amendment was issued in January 1997 by the Office of Administrative Law.

The federal lawsuit has been dismissed; BioGro stipulated to the dismissal on May 17, 1997.

In 1996, the Commission considered and then directed the Attorney General to prepare and file with the Supreme Court a "Friend of the Court" brief in the case *Akins vs. People of the State of California*. This case, and a related case before the Court, *Bunch vs. Coachella Water District*, ask the question: are government agencies strictly liable for flood damage to private land arising from a flood control project, or should a "reasonableness" test be applied. On May 8, 1997, the Supreme Court unanimously adopted a ruling in *Bunch* consistent with that advocated by the Commission. The Court subsequently returned *Akins* to Court of Appeals to be reviewed in light of the *Bunch* case. On September 12, 1997, an *Akins* amicus brief was filed with the Court of Appeals on behalf of the Commission.

### **Actions Supporting the Goals of the Act:**

The Commission continued to proceed on several fronts with activities and actions which promote the goals and programs outlined in the Act:

**Delta In-Channel Islands:** The Commission continues to act as sponsor for the San Francisco Estuary Project's regional meetings in the Delta to forward the goals and programs in the Comprehensive Conservation and Management Plan for the Bay and Delta. The group has focused on protection and enhancement of in-channel islands, the last remnants of historic Delta habitat.

As part of a specific project to develop pilot projects for appropriate techniques to protect in-channel islands, the Commission funded a \$27,000 survey of four selected sites. In November, the Governor and Secretary for Resources announced that the Work Group's Category III grant application had been approved by CALFED. Funds will cover the first phase of the project-- design, environmental review, and permits.

**Geographic Information System:** The Commission continues to maintain and improve a geographic information system (GIS) to monitor activities and land use changes in the Delta with the assistance of Teale Data Center, as the Commission's consultant.

This information is available to the public in the Commission's office and through the Internet on the Commission's home page ([www.delta.ca.gov](http://www.delta.ca.gov)). The Commission's recent studies and reports will also be available on the home page.

**Monthly Pending Projects Memo:** Staff prepares a monthly project monitoring memo which lists and describes pending projects (local, state, and federal projects) in the Delta area. There is no other similar service provided for the Delta region.

**Monitoring the San Luis Drain:** The Commission monitors activities associated with the San Luis Drain and release of agricultural wastewaters into the Delta via the Grasslands Bypass project. The Commission position on the San Luis Drain, adopted in 1995, is support of a resolution of the issue in a manner that protects the environmental values of the Delta. There were no Drain associated activities in 1997.

**Monitoring CALFED Planning Process:** The Commission and staff have actively participated in the CALFED planning process, particularly in light of how the program might affect agriculture, wildlife habitat, recreation, and levees in the Delta Primary Zone.

The Commission set up a CALFED Subcommittee to review CALFED work products and report to the Commission; staff spent hundreds of hours preparing for and attending work group and BDAC meetings; and the staff briefed the Commission on CALFED activities at every meeting in 1997. In September, the Commission reviewed and approved a letter on the Draft Ecosystem Restoration Program Plan encouraging actions that would minimize loss of agricultural lands in the Delta.

**Support for Abandoned Vessel Removal Legislation:** The Commission adopted a position of support for SB 172, Senator Rainey's legislation to fund a program allowing swift removal of abandoned vessels from the Delta waterways. This concept had widespread support from various sectors of the Delta, particularly the Sheriffs' Marine Patrols. Staff attended several Legislative hearings and testified in support of the legislation. The legislation was approved in September and signed into law in October.

The Commission staff also participates in a group called Delta Partners sponsored by the Coast Guard. The group of local, State, and federal agencies and interested parties addresses boating-related issues of concern to the Bay Area and the Delta.

**Raising Awareness of Exotic Species:** The Commission received several briefings in 1997 on the impacts to Delta environment and species from exotic species. In May, Banky Curtis, Regional Manager, briefed the Commission on the possible impacts of Northern Pike on endangered fish species. In November, staff of the Sea Grant program briefed the Commission on possible invasion of freshwater zebra mussels which have caused extensive damage to water conveyance pipes, and displace native bivalve species. Also in November, the Commission received a briefing from Department of Boating and Waterways staff on the implementation of a program to control *Egeria densa* in the Delta. *Egeria densa* is an exotic, aquatic plant which adversely impacts recreational boating, and other activities.

#### **Appeal of Local Government Decisions:**

No local government decisions were appealed to the Commission in 1997.

#### **Commissioner Members:**

The Commission is made up of 19 members designated in the Act representing six State agencies, five Delta counties, three councils of governments, and five reclamation and water district representatives. Patrick McCarty, who represents the Central Delta Water Agency, serves as Chair and North Delta Water Agency representative Steve Mello is the Vice Chair. A complete roster of the Commission members during 1997 is attached.

#### **Subcommittees:**

The Commission has created several subcommittees to address specific tasks and issues. The Subcommittees that met during 1997 include:

Budget, Finance, Operations and Administration Subcommittee provides oversight of the Agency's fiscal and administrative matters: Commissioners Calone, Sekelsky, Salmon, Simas, McGowan, Ferreira, Yates, and Chairman McCarty.

Levee Subcommittee addresses special concerns associated with Delta Levees: Commissioners Potter, Broddrick, Curry, and Mello, and Chairman McCarty.

Recreational Users Study Oversight Subcommittee provides oversight for the survey project: Commissioners Nottoli, Murphy, Curry, and public members.

CALFED Subcommittee provides review and recommendations regarding CALFED documents: Commissioners: Mello, Murphy, Curry, and Yates.

The following Subcommittees did **not** meet during 1997:

San Luis Drain Subcommittee appointed to study the San Luis Drain issue: Commissioners Potter, Yates, Broddrick, and Thomson.

Legislative Subcommittee provides advice on proposed and pending legislation: Commissioner Curry.

#### **Status of the Commission's Loan from the Environmental License Plate Fund**

The 1992 legislation included provisions for a \$250,000 loan to the Commission from the Environmental License Plate Fund (ELPF). The loan is to be repaid no later than December 31, 1998.

Unexpended funds from the original loan, in the amount of \$49,500, were returned back to the ELPF at the end of FY 94-95.

Funds unexpended and/or credited against the original loan include:

FY 94-95: \$49,500

FY 95-96: \$81,000 (Unexpended, not credited to ELPF loan)

FY 96-97: \$62,000

Funds from the 10% penalty assessment on fines imposed for violations in the Delta (no longer collected as of January 1, 1997): \$15,000



TOTAL: \$207,500

### **Administration**

The Commission offices are located in Walnut Grove in Sacramento County. Margit Aramburu is the Executive Director, with Debra Eddy as full time support staff. Assistance was provided in 1997 by part-time student assistant, Marnie Kagan, and Environmental Services Intern, Walter Kornichuk. Richard Frank, Supervising Deputy Attorney with the Attorney General's Office, and Dan Siegel, Deputy Attorney General, with assistance from Christine Sproul, Deputy Attorney General, provide legal support for the Commission.

Operating costs of the Commission are approximately \$17,000 per month. The Commission received \$288,000 in FY 96-97, and \$287,000 in FY 97-98. The Commission is funded by funds from three special funds; no general funds are used to support the Commission. The three special funds are: Environmental License Plate Fund, Delta Flood Fund, and Harbors and Watercraft Fund.

Attachments:

Commission Roster

Map of the Primary Zone of the Delta

Tables of Approved Projects in the Primary Zone

### **1997 Commission Roster**

Contra Costa County Board of Supervisors:

Supervisor Joe Canciamilla

**Sacramento County Board of Supervisors:**

Supervisor Don Nottoli

**San Joaquin County Board of Supervisors:**

Supervisor Edward Simas

**Solano County Board of Supervisors:**

Supervisor Skip Thomson

**Yolo County Board of Supervisors:**

Supervisor Mike McGowan

**Sacramento and Yolo County Cities:**

Councilmember Heather Fargo, City of Sacramento \*

Councilmember Christopher Cabaldon, City of West Sacramento

**San Joaquin County Cities:**

Councilmember Gloryanna Rhodes, City of Lathrop

**Contra Costa and Solano County Cities:**

Mayor Fred Harris, City of Rio Vista

**North Delta Water Agency Reclamation Districts (two seats):**

Darrell Ferreira, Grand Island

Steve Mello, Tyler Island, **Vice Chair**

West Delta Reclamation Districts:

Robert Calone, Winter Island

**Central Delta Water Agency Reclamation Districts:**

Patrick N. McCarty, **Chair**

South Delta Water Agency Reclamation Districts:

Bill Salmon, Union Island

**Department of Parks and Recreation:**

Donald Murphy, Director

**Department of Fish and Game:**

Ryan Broddrick, Chief Deputy

**Department of Food and Agriculture:**

A.J. Yates, Undersecretary

**State Lands Commission:**

Steve Sekelsky, Resource Protection, Division of Environmental Planning and Management \*

Dwight Sanders, Chief, Division of Environmental Planning and Management

**Department of Boating and Waterways:**

Bill Curry, Senior Civil Engineer, Boating Facilities Division

**Department of Water Resources:**

Robert Potter, Chief Deputy Director

\* Indicates Commissioners no longer on the Commission.